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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES**

Application No.	:	09/319,243	Confirmation No.:	2663
Applicant	:	Ping Liong Tjoa		
Filed	:	June 7, 1999		
Title	:	Training Apparatus		
TC/A.U.	:	3764		
Examiner	:	L. Hamilton		
Docket No.	:	TJOA3001/FJD		
Customer No.	:	23364		

REQUEST FOR RECONSIDERATION EN BANC

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

Receipt of the DECISION ON APPEAL issued on March 4, 2010 is gratefully acknowledged.

This request is intended to bring to the attention of the Board several points arising from the DECISION which require reconsideration as they arise from an incorrect application of technology and the law.

(1)

On page 8 of the DECISION, it is stated: "[a]ccordingly, Bosko's barbell structurally meets the limitations of claim 12." This is technically incorrect. On page 7 of the DECISION, the board states that: "Bosko portrays in its Fig. 7.....a conversely concave region on its side toward said intermediate element." What Bosko shows in Fig. 7 is a bar 52 with threaded connections at each end for receiving a connector to which a container 50, 51 is attached. The containers are spherical and as such do not contain a "conversely concave region." The "conversely concave region" is a transition region between the "spherical region" of

the end element and the “turning region” which leads to the intermediate element. Bosko has a complete sphere and a rod, which are joined together without any transition. To conclude otherwise is to ignore real structural differences.

(2)

On page 8 of the DECISION, the Board states: “ [a]s to whether Bosko is too massive to be adapted to the palm, we must first construe the term ‘adapted’....The disclosure “[s]o far as we can see, the only general requirement for such suitability is that the palm be able to contact the surface. So we construe the term adapted to the palm of the hand to mean structured so the palm can be in contact with.” Then on page 9, the Board concludes “[c]learly, the spherical elements in Bosko’s Fig. 7 allow such contact.”

On page 6, the Board states the well settled law that “...a patent applicant is entitled to be his or her own lexicographer.....although an inventor is free to define the specific terms used to describe the invention, this must be done with reasonable clarity, deliberateness, and precision...” Well and good, but then the Board proceeds to inject the following: “[t]he ordinary and customary meaning of ‘adapt’ is to make suitable to or fit for a specific use or situation.” If this is the definition, then why is the Board relying on a definition that does not derive from the one quoted, i.e., “contact.” This usage does not, it is respectfully submitted, follow from the definition. Another definition is found in Webster’s New International Dictionary, on page 23 which defines “adapt” to mean “to conform.” In either definition, “contact” does not follow, yet the Board chose “contact” so that the rejection could be affirmed. A better definition, friendlier to applicant, and therefore to be preferred by the law, would be “conform.” Such a definition clearly avoids the rejection, because the spheres of Bosko most certainly do not conform to the palm of the users hand.

The Board is urged to reconsider their position and choose “conform” rather

than "contact" thereby avoiding the Bosko reference. The point of review is to do substantial justice which the choice of "conform" does..


(3)

As to the declarations, the Board stated on page 9: "[w]e agree that the declarations provide no comparison with the structure in the prior art and therefore present no evidence of how the claim is not obvious over the prior art." The declarations were not submitted to distinguish over the art but to show commercial success, i.e., acceptance by the public. Such a declaration under 37 CFR 1.132 is permissible for this purpose. Such a declaration is submitted "...to traverse the rejection...on a basis not otherwise provided for.." The declarations should be judged by whether or not they show acceptance by the public and not whether they define over the art. If the Bosko device were to be constructed and provided to, for example, a 70 year old woman, she most certainly would not be able to place it between the two palms of her hands and raise the device above her head. She can with the device of the invention, and that is what the declarations are attesting to.

The board is urged to give the noted declarations their proper weight and accept them as showing commercial success, i.e., acceptance by the public.

Reconsideration by the full Board is respectfully requested.

Respectfully submitted,



Felix J. D'Amorosio
Reg. No. 25,721

Date: May 4, 2010

Webster's
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New International
Dictionary
OF THE ENGLISH LANGUAGE
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adaptation

ad-am-ite ʔ'ada,mīṭ\ n-s usu cap [Adam, the biblical first man + -ite] 1: a person who imitates Adam in going naked; *specif*: a member of any of various ascetic sects noted for practicing ritual nakedness in secret religious assemblies and dispensing with marriage on the basis of having entered a reborn state of heavenly innocence 2: a descendant of Adam: a human being
2adamīte ʔ'ad\ adj, usu cap: of, relating to, or descended from Adam
2adamīte ʔ'ad\ also ad-am-īne ʔ'ada,mēn\ n-s [adamīte, modif. (influenced by -ite) of F adamīne, fr. Gilbert-Joseph Adam (1881) Fr. mineralogist + F -ine; adamīne fr. F: a mineralogical term denoting a kind of basaltic or andesitic (hardness 3.5, sp. gr. 4.34-4.35)
ad-am-it-ic ʔ'ad,mīd-ik\ adj, usu cap [adamīte + -ic]: having the characteristics of or resembling Adam or the Adamites (in a state of ~ nudity ~ Norman Douglas)
ad-am-it-ism ʔ'ada,mīd-izəm\ n-s usu cap: the practice of going naked: a state of being unclothed
adams ʔ'adəm\ n
adam's ale n, usu cap 1st A [after the biblical Adam; fr. its being provided by nature and thus presumably being the only drink in the Garden of Eden]: WATER
adam's apple n, usu cap 1st A 1: PLANTAIN 2: CRAP-
TASMINE 3: SHADDOCK 1
2adam's apple n, usu cap 1st A [trans. of NL *pomum adam*, trans. of LHēb *appāh* bā ādhām bodily protuberance on a man, misinterpreted (because of double meanings in Heb) as the apple of Adam]: the projection formed by the thyroid cartilage in the neck particularly prominent in males ~ compare LARYNX
adam's cup n, usu cap A [so called fr. the shape of its leaves]
adam's flag n, usu cap A: PLANTAIN
adam's flannel n, usu cap A [so called fr. the texture of the leaves]: MULLEIN
ad-ams-ite ʔ'adəm,zīṭ\ n-s [Roger Adams b1889 Am. chemist + -ite] 1: a yellow crystalline arsenical C₁₂H₄AsCl₅ used in the manufacture of insecticides 2: a chemical called also diphenylaminechlorarsine, phenarsazine chloride
adam's needle also adam's needle-and-thread n, usu cap A [so called fr. the shape of the fruits] 1: any of several species of the genus *Yucca* 2 adam's needles pl: LADY'S-COMS
adam's pitcher n, usu cap A: PITCHER PLANT
ad-ana ʔ'ad'ana\ adj, usu cap [fr. *Adana*, Turkey]: of or from Adana, a Turkish city the kind or style prevalent in Adana
ad-anal ʔ'ad'ānāl\ adj [ad + anal]: near the anus (~ setae)
adance ʔ'ad\ adj [ʔ'a + dance (v.)]: DANCING
ad-an-glo ʔ'ad\ adj [ʔ'a + dangle (v.)]: DANGLING
ad-an-so-nia ʔ'ad'asōnē, ʔ'ad-an'-.nyā\ n, cap [gnls. fr. Mische *Adansonia* (a kind of tree) + -sonia (a kind of tree) (family Bombacaceae), having palmately divided leaves, white pendulous flowers, and capsular fruits ~ see BAOBAB, CREAM-OF-TARTAR TREE
ad-ap-ī-dae ʔ'adap,de\ n pl, cap [NL *Adapid-*, *Adapis*, type genus + -idae]: a family of extinct lemuroid primates widely distributed in the northern hemisphere during the Eocene and generally considered to be ancestral to modern lemurs
ad-a-plis ʔ'adaps\ n, cap [NL]: a genus of primitive crested fossil lemurs from the Eocene of Europe
ʔadapt ʔ'adapt also a'ʔ\ vb -ED/-ING-S [F or L: F *adapter*, fr. L *adaptare*, fr. ad + aptare to lit. fr. *aptus* fit ~ more at APT] vt 1 a: to make suitable or fit (as for a particular use, purpose, or situation) 2: adjust (the ~ of a machine) 3: to alter for it (for many uses) b: to make suitable (for a new or different use or situation) by means of changes or modifications (he ~ed the novel for the stage) (~ his instruction to meet individual needs ~ P.H.Furley) 2: to adjust (oneself) to particular conditions or ways: bring (oneself) into harmony with a particular environment 1 ACCOMMODATE 2 RECONCILE
ʔadapt myself to ~ to isolate a life (titula E. Clark) (a given environment with organisms ~ing themselves to it ~ A.N. Whitehead) ~ vi: to become adjusted; *specif*: to bring oneself or esp. one's acts, behavior, or mental state into harmony with changed conditions or environment (man ~s socially to an increasingly complicated ~ culture ~ J.F.Brown)
ʔadapt MYST. ACCOMMODATE, CONFORM, RECONCILE: to ADAPT to something ~ ADAP to one thing to another implies a suiting or fitting by alteration or modification (to see men only in terms of the geographical conditions to which they adapt themselves ~ Alfred Kazin) (our plans must change in adapting to the new situations ~ Hugo Wall) (the inside walls are all movable so that the interior can easily be adapted to meet the requirements of the *order Calling*) 2: to ADJUST something or to ADJUST one thing to another usu. suggests no significant alteration or modification but rather a bringing into a correspondence or harmony, prearranged or clearly possible but not quite achieved previously (the main problem confronting the child is not yet to adjust to a cultural milieu but primarily to adjust to the changing phases of his biological growth ~ Franz Alexander) ACCOMMODATE often suggests the special or transient adaptation of one thing to another or of two things to each other, implying a significant 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